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MONTANA LEGISLATIVE HISTORY

Chapter 198 19 89

Bill H 116 S _____ Original bill & history ___C

H. Committee on Human Services & Aging		S. Committee on Judiciary	
Hearing Date(s) Jan 18	✓C	Hearing Date(s) Mar 06	✓C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Jan 19	✓C	Mar 06	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 116

INTRODUCED BY MCDONOUGH, WHALEN, STRIZICH, RUSSELL

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

IN THE HOUSE

JANUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
	FIRST READING.
JANUARY 19, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
JANUARY 20, 1989	PRINTING REPORT.
JANUARY 21, 1989	SECOND READING, DO PASS.
JANUARY 23, 1989	ENGROSSING REPORT.
JANUARY 24, 1989	THIRD READING, PASSED. AYES, 97; NOES, 1.
	TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 6, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 7, 1989	SECOND READING, CONCURRED IN.
MARCH 9, 1989	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 10, 1989 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HB 116 INTRODUCED BY MCDONOUGH, ET AL.
AMEND ELDER ABUSE PREVENTION ACT TO INCLUDE DEVELOPMENTALLY DISABLED PERSONS
BY REQUEST OF DEPARTMENT OF FAMILY SERVICES

1/11	INTRODUCED		
1/11	REFERRED TO HUMAN SERVICES & AGING		
1/18	HEARING		
1/19	COMMITTEE REPORT--BILL PASSED		
1/21	2ND READING PASSED	91	1
1/24	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
1/25	REFERRED TO JUDICIARY		
3/06	HEARING		
3/06	COMMITTEE REPORT--BILL CONCURRED		
3/07	2ND READING CONCURRED	50	0
3/09	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/16	SIGNED BY PRESIDENT		
3/16	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 198 EFFECTIVE DATE: 3/21/89		

HB 117 INTRODUCED BY BACHINI, ET AL.
FUND CONSTRUCTION OF MACHINE SHOP AT NORTHERN AGRICULTURAL RESEARCH CENTER

1/11	INTRODUCED
1/11	REFERRED TO APPROPRIATIONS
3/14	HEARING
3/18	TABLED IN COMMITTEE

HB 118 INTRODUCED BY CODY
REVISE THE LAW ON FUNERAL DIRECTING AND MORTUARY SCIENCES
BY REQUEST OF DEPARTMENT OF COMMERCE

1/11	INTRODUCED		
1/11	REFERRED TO STATE ADMINISTRATION		
1/12	FISCAL NOTE REQUESTED		
1/18	FISCAL NOTE RECEIVED		
1/19	FISCAL NOTE PRINTED		
1/26	HEARING		
1/26	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/28	2ND READING PASSED	81	12
1/31	3RD READING PASSED	85	12
	TRANSMITTED TO SENATE		
2/02	REFERRED TO STATE ADMINISTRATION		
3/09	HEARING		
3/09	COMMITTEE REPORT--BILL CONCURRED		
3/10	2ND READING CONCURRED	49	0
3/13	3RD READING CONCURRED	44	0
	RETURNED TO HOUSE		
3/18	SIGNED BY SPEAKER		
3/20	SIGNED BY PRESIDENT		

HOUSE BILL NO. 116

INTRODUCED BY Bill Driscoll Whalen Jr.

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES Russell

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE ELDER ABUSE PREVENTION ACT TO INCLUDE DEVELOPMENTALLY DISABLED PERSONS; AMENDING SECTIONS 53-5-501 THROUGH 53-5-504, 53-5-511 THROUGH 53-5-513, 53-5-521, AND 53-5-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 53-5-501, MCA, is amended to read:

"**53-5-501. Short title.** This part may be cited as the "Montana Elder and Developmentally Disabled Abuse Prevention Act"."

Section 2. Section 53-5-502, MCA, is amended to read:

"**53-5-502. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, neglect, and exploitation of Montana's elderly and developmentally disabled persons through the identification and reporting of acts of such abuse, neglect, and exploitation."

Section 3. Section 53-5-503, MCA, is amended to read:

"**53-5-503. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.

~~(2)~~(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

~~(3)~~(4) "Long-term care facility" means a facility defined in 50-5-101.

~~(4)~~(5) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

~~(5)~~(6) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare ~~to--care--for~~

INTRODUCED BILL
HB116

~~an--older--person--by--failing~~ to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

~~(6)~~(7) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 53-5-525(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

~~(7)~~(8) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 4. Section 53-5-504, MCA, is amended to read:

"53-5-504. Duties of department of family services. (1) The department shall investigate reports of abuse, neglect, or exploitation received pursuant to 53-5-511(1)(a).

~~(1)~~(2) The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

~~(2)~~(3) The department shall, when appropriate, provide protective services under Title 53, chapter 5, part 2, or under Title 53, chapter 20, part 4, for ~~an older~~ a person

alleged to have been abused, neglected, or exploited.

(4) If a person alleged to be abused, neglected, or exploited pursuant to this part or his caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 53-5-511(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding there is probable cause to believe the person is abused, neglected, or exploited."

Section 5. Section 53-5-511, MCA, is amended to read:

"53-5-511. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

(a) if the ~~older~~ person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the ~~older~~ person resides or in which the acts that are the subject of the report occurred;

(b) if the ~~older~~ person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor,

optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless he acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1)."

Section 6. Section 53-5-512, MCA, is amended to read:

"**53-5-512. Content of report.** (1) The report required by 53-5-511 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

(2) The report referred to under this section shall contain:

(a) the names and addresses of the older person or the developmentally disabled person and the person, if any,

responsible for his care;

(b) the name and address, if available, of the person who is alleged to have abused, neglected, or exploited the older person or the developmentally disabled person;

(c) to the extent known, the person's age and the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous injuries sustained by the older person or the developmentally disabled person; and

(d) the name and address of the person making the report."

Section 7. Section 53-5-513, MCA, is amended to read:

"**53-5-513. Confidentiality.** (1) The case records of the ~~department~~ departments of social and rehabilitation services and ~~its~~ family services, their local affiliate, ~~the county welfare department~~, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 53-5-511 shall be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his care an older person or a developmentally disabled person who he reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher; and

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) shall be disclosed upon request to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person or a developmentally disabled person is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government ~~under--the--provisions--of--Title--37~~, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 8. Section 53-5-521, MCA, is amended to read:

"**53-5-521. Admissibility of evidence.** In any proceeding resulting from a report made pursuant to the provisions of this part or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the ~~older~~ person who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the

attorney-client privilege granted by 26-1-803."

Section 9. Section 53-5-525, MCA, is amended to read:

"**53-5-525. Penalties.** (1) Any person who purposely or knowingly fails to make a report required by 53-5-511 or discloses or fails to disclose the contents of a case record or report in violation of 53-5-513 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person or a developmentally disabled person is guilty of an offense and upon a first conviction may be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both."

Section 10. Effective date. [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES AND AGING

Call to Order By: Stella Jean Hansen, on January 18, 1989, at 3:00 p.m.

ROLL CALL

Members Present: All, except

Members Excused: Rep. Gould

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON HB 116

Presentation and Opening Statement by Sponsor: Rep. McDonough stated that this bill was an act to amend the Elder Abuse Prevention Act to include developmentally disabled persons. The bill would provide for reporting abuse and neglect of a developmentally disabled person and will provide that the Department of Family Services investigate such reports. Currently, the Department provides social work services to the developmentally disabled and licenses developmentally disabled homes.

List of Testifying Proponents and What Group They Represent:

Charley McCarthy, Department of Family Services
John Thorson, Mental Health Association of Montana
Cris Volinkim, Developmentally disabled of Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Charley McCarthy, stated that as a result of mandatory reporting of elder abuse, there has been a dramatic increase in the last five years in the number of reported incidents of alleged abuse, neglect and/or exploitation of the elderly. Without a mandatory reporting law for the developmentally disabled, over

the same period, the increase in the number of reports of abuse, neglect, or exploitation of the developmentally disabled has been less dramatic. Exhibit 1.

John Thorson, supplied proposed amendments in support of this legislation. Exhibit 2. Mr. Thorson also indicated that the inclusion of mentally disabled persons should also be covered.

Owen Warren, a supporter, said AARP also supports the amendments to provide protection to those who are most vulnerable to abuse, neglect and exploitation. Exhibit 3.

Cris Volinkim supports this bill for the developmentally disabled people of Montana.

Questions From Committee Members: Rep. Simon asked Mr. McCarthy what type of investigators the Department of Family Services had and Mr. McCarthy said the Department had a number of adult protective services workers around the state. Rep. Simon then questioned action which might involve action within a court of law and Mr. McCarthy said that the social workers were trained to work with the county attorney in this type of work.

Rep. Boharski asked Mr. McCarthy if there was another statute available for child protective services and Mr. McCarthy said that there was.

Rep. Brown asked Mr. McCarthy if he opposed the amendments which had been offered and he said that he approved of them.

Rep. Good asked Mr. McCarthy if the language in the bill were totally new. Are we expanding the law to include the elderly and possibly the mentally ill as far as those individuals right to refusal to enter their homes. Mr. McCarthy said that the law already included the elderly and the new legislation was to include the developmentally disabled.

Rep. Nelson asked Mr. McCarthy if the person alleged to be abused, refuses to allow investigation, would this law usurp his right of privacy and Mr. McCarthy said it would.

Rep. Strizich asked Mr. McCarthy if a court order was required for probable cause. Mr. McCarthy indicated it would.

Rep. Whalen questioned Mr. McCarthy if reasonable cause was defined somewhere else in the statutory language. Reasonable cause is a term which was used by the discretion of the judge.

Rep. Simon asked Mr. McCarthy about a younger relative who might live in the home of an elderly person and how this legislation might affect this situation and Mr. McCarthy said that with this new legislation the fear of exploitation might be resolved.

Closing by the Sponsor: Sponsor closes on the bill.

HEARING ON HB 200

Presentation and Opening Statement by Sponsor: Rep. Vincent stated that this bill was an act creating the Montana Child Care Act to provide for a state program for the improvement of child care; providing for low income day care support programs and transitional child care programs; creating a child care advisory council, providing an appropriation. Rep. Vincent stated that this bill creates needed coordination and structure for child care services. It assures child care services will continue to be totally privately provided, and allows the development of resources that will assist private providers with improvements in the quality of child care and establishes resource and referral programs at the local level which will assist parents with their child care choices. Exhibit 4.

List of Testifying Proponents and What Group They Represent:

Senator Michael Halligan, Family Coalition
Marilin Trotter, League of Women Voters
Boyce Fowler, Montana Department of Family Services
Katherine Campbell, Montana Association for the Education of Young Children
Don Judge, AFL-CIO
Cindy Garthwaite, Social worker
Nancy Characklis, Day care center owner
Betty Wood, American Association of University Women
Loralee Beatty, Montana Child Care Association
Pam Marshall, Montana Low Income Coalition
Virginia Jellison, Montana Low Income Coalition
Mary Nelson, St. Thomas Child and Family Center
Mike Stephen, Montana Safety Belt Coalition
Nancy Lee Griffin, Montana Women's Lobby
Joseph Moore, Montana Rainbow Coalition

Rep. Hansen requested a division of the amendments. Retaining page 1, line 17.

Amendments and Votes: A vote was taken on the first amendment, all voted in favor.

Rep. Good made a Substitute Motion to Move an Amendment on page 4, line 12 "imminent and substantial."

Amendments and Votes: A vote was taken on the substitute amendment, all in favor with Reps. Boharski, Strizich, Squires and Hansen voting no. Amendment passes.

Recommendation and Vote: Rep. Squires made a Motion to DO PASS AS AMENDED. A vote was taken and passed.

DISPOSITION OF HB 116

Amendments and Votes: Rep. Russell made a Motion to DO PASS. A vote was taken and passed.

Discussion: After the vote was taken Rep. Boharski requested that a Fiscal Impact Statement was needed on this bill in regards to the developmentally disabled.

Rep. Russell moved that this bill be placed on a consent calendar. An objection was raised by a majority of the committee and was thence denied.

Rep. Simon made an opposition to the motion on the inclusion of the developmentally disabled being added to the bill. Rep. Whalen also opposed to this and stated that provisions were already contained in the law for commitment of individuals in the Department of Institutions who take care of the developmentally disabled people.

Rep. Boharski withdrew his Motion.

ADJOURNMENT

Adjournment At: 5:35 p.m.

Stella Jean Hansen

REP. STELLA JEAN HANSEN, Chairman

SJH/ajs
1807.min

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-18-89

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	✓		
Bill Strizich	✓		
Robert Blotkamp	✓		
Jan Brown	✓		
Lloyd McCormick	✓		
Angela Russell	✓		
Carolyn Squires	✓		
Jessica Stickney	✓		
Timothy Whalen	✓		
William Boharski	✓		
Susan Good	✓		
Budd Gould			✓
Roger Knapp	✓		
Thomas Lee	✓		
Thomas Nelson	✓		
Bruce Simon	✓		

January 18, 1989

TESTIMONY IN SUPPORT OF HB 116

AMENDMENTS TO THE MONTANA ELDER ABUSE PREVENTION ACT

SUBMITTED BY DON SEKORA, DEPARTMENT OF FAMILY SERVICES

This bill has been submitted to amend the Montana Elder Abuse Prevention Act to include developmentally disabled adults in the mandatory reporting requirements of the Act and to give the department's social workers explicit authority to investigate incidents of abuse, neglect, and or exploitation. In addition, these amendments to the act will give law enforcement or department social workers the authority to request a court order to investigate those cases where the alleged victim is in serious danger.

As a result of mandatory reporting of elder abuse, there has been a dramatic increase in the last five years in the number of reported incidents of alleged abuse, neglect, and/or exploitation of the elderly. Without a mandatory reporting law for the developmentally disabled, over the same period the increase in the number of reports of abuse, neglect, or exploitation of the developmentally disabled has been less dramatic.

There are approximately 15,000 developmentally disabled adults living in Montana. Currently 1,374 of this number are receiving services. We have concern for the remaining developmentally disabled adults that are not receiving services. These unprotected persons are very vulnerable to the mental and physical harm associated with abuse, neglect and/or exploitation. In the majority of these cases when abuse has occurred, it is not brought to the Department's attention until a great deal of harm has been done. The department has a need to know about these cases earlier, so the physical and mental harm can be minimized, and so the services required will be less extensive and less costly. Mandatory reporting for the developmentally disabled will assure this in most cases.

This bill gives the Department of Family Services <u>explicit</u> authority to investigate cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. The current act provides <u>implied</u> authority, but many times this authority has been questioned by alleged perpetrators and by attorneys. Department social workers have been prevented from doing a complete investigation in approximately 15 cases a year because of this issue. In four of those cases DFS received referrals later on that indicated more harm was done and more extensive services were needed. There is no way of knowing what happened in the other 10 cases not referred back, but statistically we expect that at least half continue to be abused.

EXHIBIT 1
DATE 1-18-89
HB 116

The last amendment included in this bill will give law enforcement or Department social workers the authority to petition the local district court for an order to investigate alleged cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. This authority would only be used in those cases where the alleged victim or caretaker refuses to allow the worker to do an investigation and it is believed that serious abuse, neglect, and/or exploitation is occurring that is physically and/or mentally harming the alleged victim.

In 1987 DFS had 27 cases where department social workers were refused to do investigations. Of these we received 4 referrals later on that indicated more harm was done and the services needed were more extensive. In 1988 we had 23 similar cases where department workers were not allowed to investigate. Five of these were referred back in worse shape and requiring more extensive services. In many of these cases there has been a lot of pressure on the department's social workers to do something. The pressure comes from community persons knowledgeable about the case and from those reporting the abuse. The social workers hands have been tied by the refusal to allow them to investigate or even to see the alleged victim. To prevent serious and extensive physical and/or mental harm or death the department needs to be allowed to investigate these cases as soon as possible.

Thank you for your consideration of these amendments to the Montana Elder Abuse Prevention Act. These amendments will assure that the department can better serve those elderly and developmentally disabled who are victims of abuse, neglect, and/or exploitation.

Proposed Amendment to H.B. 116
to add protection to persons suffering from a mental disorder

Submited by John E. Thorson
Doney & Thorson
In behalf of the
Mental Health Association of Montana

House Human Services Committee
January 18, 1989

Title: "to include developmentally disabled persons and mentally disordered persons:"

Page 1, line 14: "Montana Elder, Developmentally Disabled, and Mentally Disordered Abuse Prevention Act"

Page 1, line 22: "Montana's elderly, developmentally disabled persons, and mentally disordered persons "

Page 2, line 6: "older person, developmentally disabled person, or mentally disordered person"

Page 2, line 13: "older person, developmentally disabled person, or mentally disordered person"

Page 2, line 18 (new subsection): "(5) 'Mental disordered person' means a person 18 years of age or older who is suffering from a mental disorder as defined in 53-21-102."

Page 2, line 24: "older person's, developmentally disabled person's, or mentally disordered person's welfare"

Page 3, line 4: "older person, developmentally disabled person, or mentally disordered person"

Page 4, line 15: "older person, developmentally disabled person, or mentally disordered person"

Page 5, line 16: "older person, developmentally disabled person, or mentally disordered person"

Page 6, line 6: "older person, developmentally disabled person, or mentally disordered person"

EXHIBIT 2
DATE 1-18-89
HB 116

Page 6, line 24: "older person, developmentally disabled person, or mentally disordered person"

Page 7, line 4: "older person, developmentally disabled person, or mentally disordered person"

Page 7, line 8: "older person, developmentally disabled person, or mentally disordered person"

Page 7, line 13: "departments of social and rehabilitation, family services, and institutions, their local affiliates"

Page 7, line 24: "older person, developmentally disabled person, or mentally disordered person"

Page 8, line 2: "older person, developmentally disabled person, or mentally disordered person"

Page 8, line 13: "older person, developmentally disabled person, or mentally disordered person"

Page 9, line 9: "older person, developmentally disabled person, or mentally disordered person"

Page 10, line 10: "older person, developmentally disabled person, or mentally disordered person"

AARP

1988-1989
MONTANA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mrs. Molly L. Munro
4022 6th Avenue South
Great Falls, MT 59405
(406) 727-5604

SECRETARY
Mr. John C. Bower
1405 West Story Street
Bozeman, MT 59715
(406) 587-7535

January 18, 1989

TO: House Human Services Committee

FROM: Owen Warren, American Association of Retired Persons

RE: In support of HB 116 - "An Act to amend the Elder Abuse Prevention Act to include developmentally disabled persons

The amendments will provide for the identification and reporting of acts of abuse, neglect and exploitation of the developmentally disabled and provide legal authority for law enforcement officials to levy penalties for these abuses.

The Montana State Legislative Committee of AARP supports these amendments to provide protection to those who are most vulnerable to abuse, neglect and exploitation.

EXHIBIT 3
DATE 1-18-89
HB 116

VISITORS' REGISTER

HUMAN SERVICES AND AGING COMMITTEE

BILL NO. HB 116 DATE 1/18/89

SPONSOR Rep. McDonough

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Owen Warren	Helena	✓	
CRIS VOLINKATY	Dev. Disabilities	✓	
Fred DeHon	Helena	✓	
JOAN THORSON	MENTAL HEALTH ASSN	✓ w/ AMEND.	
Charles McCarthy	Helena	✓	
JUDITH CARLSON	"	✓	
JoAnn MaFFit	Helena	✓	
Mary Jane Fox	"	✓	
Merced Day	"	✓	
Cindy Gaethmit	Missoula	✓	
Marilen Hart Trotter	Missoula	✓	
Nancy Robb	Billings	✓	
Mary O'Connor	Helena	✓	
Rosemary Miller	Helena	✓	
Brenda Nordlund	Helena	✓	
Scott White	Helena		
	Helena		
John Ray	Billings		
B Bernhart	Bozeman	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HUMAN SERVICES & AGING COMMITTEE

BILL NO. HB 116 DATE 1-18-89

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Becky Barnhart	Bozeman	X	
Lori Coulter	~~Helena~~ Butte	X	
Tim Adams MASCA	Helena	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

January 19, 1989

Mr. Speaker: We, the committee on Human Services and Aging report that HOUSE BILL 116 (first reading copy -- white) do pass.

Signed:
Stella Jean Hansen, Chairman

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Vice Chairman Al Bishop for Chairman Crippen who was temporarily delayed by another hearing, on March 6, 1989, at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al Bishop, Senators Tom Beck, John Harp, Mike Halligan, Loren Jenkins, Joe Mazurek, R. J. Pinsoneault and Bill Yellowtail

Members Excused: Senator Bob Brown

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee Secretary Rosemary Jacoby

Announcements/Discussion: There were none.

HEARING ON HOUSE BILL 116

Presentation and Opening Statement by Sponsor:

Representative Mary McDonough of Billings, District 89, opened the hearing saying the bill was to amend the elder abuse prevention act to include developmentally disabled (DD) persons. That act was passed in 1985, she said. HB 116 will expand on that act and will provide for the reporting of neglect and abuse of developmentally disabled persons and will provide that the Department of Family Services shall investigate the reports. She said the bill had been requested by the department. Currently, they offer social services to DD homes, but don't have the authority to investigate suspicious cases.

List of Testifying Proponents and What Group they Represent:

Charles McCarthy, Bureau Chief, Department of Family Services
Owen Warren, American Association of Retired Persons

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Charles McCarthy said that in 1987, there were 27 cases where social workers were refused admission. Had they been able to get in the home sooner, they would have been able to prevent deterioration of the DD person. In 1988, there were 33 cases where they were refused admission. Neighbors who made the referrals would call and ask why the department were not doing anything to stop the neglect or abuse. This bill would give the authority. One provision in the bill would give the department the power to seek a court order to enter into the home to investigate and the other provision would add the developmentally disabled to the statute, he told the committee. He presented written testimony to the committee for the record (Exhibit 1).

Owen Warren presented written testimony to the committee (Exhibit 2).

Questions From Committee Members: Senator Pinsoneault asked if developmentally disabled persons were defined or identified by the department. Mr. McCarthy said that there were definitions in other part of the statute. He said that there are approximately 15,000 DD persons in the state, of whom 1314 were receiving services. The department knows about the ones receiving services, but there are others about whom the department is concerned, he added.

Senator Pinsoneault asked if some cases required rough treatment. Mr. McCarthy said yes, that some cases require procedures where painful restraint is approved. The department is aware of which clients fall into that category, he said. Approval must be given for that kind of treatment.

Senator Halligan said that sometimes criminal laws have had to be used to allow social workers to get into the homes for investigating possible abuse. Senator Pinsoneault said that, if he had a DD individual in his home, he would be highly offended if a department staff member came to his home with a court order. Rep. McDonough said there would have to be probable cause to obtain a court order.

Senators Beck and Harp voiced concern about getting into a "witch hunt". Senator Beck asked about restraining DD persons. Mr. McCarthy said that when a case is determined, the department educates the family on the approved ways of dealing with difficult situations, at times with 200 lb. individuals. This bill would also address dealing with persons who mistreat and/or take money from these individuals.

Senator Jenkins if a report by a neighbor instigated the investigative provision being put into use. Mr. McCarthy said yes.

Closing by Sponsor: Rep. McDonough closed the hearing.

DISPOSITION OF HOUSE BILL 116

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that HOUSE BILL 116 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

At this point in the meeting, Chairman Crippen resumed the chair.

HEARING ON HOUSE BILL 97

Presentation and Opening Statement by Sponsor:
Representative Tom Kilpatrick of Laurel, District 85, opened the hearing. He said that House Bill 97 to grant city courts power to issue a temporary restraining order was a housekeeping bill. City judges and county judges have the same education, he said. He urged that they be allowed to issue temporary restraining orders. He said that if a restraining order is needed in Laurel, presently it must be obtained in Billings. The bill would save time and possibly lives, he told the committee.

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 3-6-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN			✓
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

March 6, 1989

MR. PRESIDENT:

We, your committee on Judiciary, having had under consideration HB 116 (third reading copy -- blue), respectfully report that HB 116 be concurred in.

Sponsor: McDonough (Finstad)

BE CONCURRED IN

Signed: _____

Bruce D. Crippen, Chairman

(1.)

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 3/6/89
BILL NO. HB 116

January 18, 1989

TESTIMONY IN SUPPORT OF HB 116

AMENDMENTS TO THE MONTANA ELDER ABUSE PREVENTION ACT

DEPARTMENT OF FAMILY SERVICES

This bill has been submitted to amend the Montana Elder Abuse Prevention Act to include developmentally disabled adults in the mandatory reporting requirements of the Act and to give the department's social workers explicit authority to investigate incidents of abuse, neglect, and or exploitation. In addition, these amendments to the act will give law enforcement or department social workers the authority to request a court order to investigate those cases where the alleged victim is in serious danger.

As a result of mandatory reporting of elder abuse, there has been an increase in the last five years in the number of reported incidents of alleged abuse, neglect, and/or exploitation of the elderly.

There are approximately 15,000 developmentally disabled adults living in Montana. Currently 1,314 of this number are receiving services. We have concern for the remaining developmentally disabled adults that are not receiving services. These unprotected persons are very vulnerable to the mental and physical harm associated with abuse, neglect and/or exploitation. In the majority of these cases when abuse has occurred, it is not brought to the Department's attention until a great deal of harm has been done. The department has a need to know about these cases earlier, so the physical and mental harm can be minimized, and so the services required will be less extensive and less costly. Mandatory reporting for the developmentally disabled will assure this in most cases.

This bill gives the Department of Family Services <u>explicit</u> authority to investigate cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. The current act provides <u>implied</u> authority, but many times this authority has been questioned by alleged perpetrators and by attorneys. Department social workers have been prevented from doing a complete investigation in approximately 15 cases a year because of this issue. In four of those cases DFS received referrals later on that indicated more harm was done and more extensive services were needed. There is no way of knowing what happened in the other 10 cases not referred back, but statistically

we expect that at least half continue to be abused.

The last amendment included in this bill will give law enforcement or Department social workers the authority to petition the local district court for an order to investigate alleged cases of abuse, neglect, and/or exploitation of elderly or developmentally disabled persons. This authority would only be used in those cases where the alleged victim or caretaker refuses to allow the worker to do an investigation and it is believed that serious abuse, neglect, and/or exploitation is occurring that is physically and/or mentally harming the alleged victim.

In 1987 DFS had 27 cases where department social workers were refused to do investigations. Of these we received 4 referrals later on that indicated more harm was done and the services needed were more extensive. In 1988 we had 23 similar cases where department workers were not allowed to investigate. Five of these were referred back in worse shape and requiring more extensive services. In many of these cases there has been a lot of pressure on the department's social workers to do something. The pressure comes from community persons knowledgeable about the case and from those reporting the abuse. The social workers hands have been tied by the refusal to allow them to investigate or even to see the alleged victim. To prevent serious and extensive physical and/or mental harm or death the department needs to be allowed to investigate these cases as soon as possible.

Thank you for your consideration of these amendments to the Montana Elder Abuse Prevention Act. These amendments will assure that the department can better serve those elderly and developmentally disabled who are victims of abuse, neglect, and/or exploitation.

2.

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3/6/89
BILL NO. HB116

AARP

1988-1989
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March 6, 1989

TO: SENATE JUDICIARY COMMITTEE

FROM: Owen Warren, American Association of Retired Persons

RE: In support of HB 116 - "An Act to amend the Elder Abuse Prevention Act to include developmentally disabled persons.

The amendments will provide for the identification and reporting of acts of abuse, neglect and exploitation of the developmentally disabled and provide legal authority for law enforcement officials to levy penalties for these abuses.

The Montana State Legislative Committee of AARP supports these amendments to provide protection to those who are most vulnerable to abuse, neglect and exploitation.